



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
AIKEN DIVISION

MILTON J. HARVEY,  
Plaintiff,

vs.

KEITH SMALL and PHILL HANNA,  
Defendants.

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CIVIL ACTION NO. 01:09-03117-HFF-SVH

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ORDER

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This case was filed as a 42 U.S.C. § 1983 action. Plaintiff is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that Defendant Hanna's motion to dismiss and Defendant Small's motion for summary judgment be granted and the case be dismissed. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on August 3, 2010, but Plaintiff failed to file any objections to the Report. In the absence of such objections, the Court is not required to give any

explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985).\*

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court adopts the Report and incorporates it herein. Therefore, it is the judgment of the Court that Defendant Hanna's motion to dismiss and Defendant Small's motion for summary judgment be **GRANTED** and the case **DISMISSED**.

**IT IS SO ORDERED.**

Signed this 2nd day of September, 2010, in Spartanburg, South Carolina.

s/ Henry F. Floyd  
HENRY F. FLOYD  
UNITED STATES DISTRICT JUDGE

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#### **NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this Order within 30 days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

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\*The Court notes that Plaintiff is likely unaware of the Magistrate Judge's Report as it appears that mail from the Court to Plaintiff has been returned as undeliverable. In light of the present posture of the case, however, and the fact that Plaintiff has failed to keep the Court apprised of his current mailing address, despite being ordered to do so, the Court has no option but to dismiss the action.